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OFFICE OF PETITIONS

In re Application of
Choi et al.
Application No. 08/961,083
Filed: October 30, 1997
Atty Docket No. PB340P2

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: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
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This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed July 29, 2004. Applicants request correction of an entry of a calculation of patent term extension of zero (0) days to an entry of an initial determination of patent term adjustment (PTA) under 35 U.S.C. 154(b)(3)(i) of three hundred eighty-eight (388) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred eighty-eight (388) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On May 21, 2004, the Office mailed a Determination of Patent Term Extension under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term extension (PTE) to date is 0 days.

On July 29, 2004, applicants timely¹ submitted an application for patent term adjustment, asserting that the application became subject to the provisions providing for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 by virtue of the filing of a continuing prosecution application (CPA) on December 11, 2000. Furthermore, applicants assert entitlement to a patent term adjustment on the basis that the USPTO failed to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 within fourteen months of the filing date of the application. Specifically, applicants

¹ The Issue Fee payment was also received in the Office on July 29, 2004.

contend entitlement to a patent term adjustment at the time of mailing of the Notice of Allowance of three hundred eighty-eight (388) days, the number of days in the period beginning on the day after the date that is fourteen months after the date on which the CPA was filed, which is February 11, 2002, and ending on the date of mailing of a restriction requirement on March 6, 2003.

Applicants state that the patent issuing from this application is not subject to any terminal disclaimer. Applicants further state that they have not engaged in any circumstance during the prosecution of the application which constitutes a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 CFR § 1.704.

Applicants' arguments are well-taken. A review of the application history reveals that the application became eligible for patent term adjustment by virtue of the filing of a CPA on December 11, 2000. A review of the application history also confirms that, as of the time of mailing of the Notice of Allowance, applicants have correctly set forth the basis for adjustment pursuant to 37 C.F.R. § 1.702(a)(1) and the period of adjustment.

Moreover, applicants' filings have been carefully reviewed. It has been determined that, as of the mailing of the Notice of Allowance, applicants had not failed to engage in reasonable efforts to conclude prosecution or examination within the meaning of § 1.704.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred eighty-eight (388) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Publishing Division for processing into a patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin A. Ferriter
KAF

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen